

SERVICE DATE – MAY 15, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35725

MCM RAIL SERVICES LLC D/B/A BALTIMORE INDUSTRIAL RAILROAD—  
OPERATION EXEMPTION—HRE SPARROWS POINT, LLC

MOTION FOR PROTECTIVE ORDER

Decided: May 14, 2013

By motion filed on April 12, 2013, MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad (MCM), seeks a protective order under 49 C.F.R. § 1104.14 to protect against the public disclosure of the confidential Railroad Services Agreement dated September 14, 2012 (the Agreement), between MCM and Hilco Rail Services, LLC (Hilco), which MCM submitted under seal in this proceeding. A proposed protective order and undertaking are included with the motion.

MCM submits that a protective order is necessary because public disclosure of the Agreement could cause commercial or other harm to MCM and Hilco.<sup>1</sup> Good cause exists to grant the motion for protective order. Issuance of the protective order will ensure that confidential information will be used solely for this proceeding and not for other purposes. Further, the motion conforms to the Board's rules at 49 C.F.R. § 1104.14 governing protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted, and the Agreement shall be subject to the Protective Order and Undertaking in the Appendix to this decision.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

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<sup>1</sup> Mot. 3.

**APPENDIX**

**PROTECTIVE ORDER**

1. For the purposes of this Protective Order, “Confidential Information” means the unredacted Railroad Services Agreement dated September 14, 2012 between MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad (“MCM”) and Hilco SP Rail, LLC, which was filed under seal on April 12, 2013, in Docket No. FD 35725.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to counsel for MCM of the attached Undertaking. Confidential Information shall be used solely for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial or other competitive purpose.

3. Confidential Information shall not be disclosed in any way or to any person without the written consent of MCM or an order of the Board, and then solely for use in connection with this and related Board proceedings, or any judicial review proceeding arising therefrom, provided that such person has been given and has read a copy of this Protective Order and agrees to be bound by its terms by executing the attached Undertaking prior to receiving access to this information.

4. Any documents containing Confidential Information must be destroyed, and notice of such destruction must be served on MCM, at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom.

5. If the Board retains the Confidential Information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 C.F.R. § 1104.14.

6. If any party intends to use Confidential Information at hearings or otherwise in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any filings or documents setting forth or revealing such Confidential Information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at any hearing during discussion of such Confidential Information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such Confidential Information in accordance with the Protective Order.

7. All parties must file simultaneously a public version of any Confidential submission filed with the Board. The Confidential Version may be served on other parties in electronic format only.

8. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, \_\_\_\_\_, have read the Protective Order governing the filing of Confidential Information by MCM Rail Services LLC, d/b/a Baltimore Industrial Railroad (MCM) in Docket No. FD 35725 and understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in Docket No. FD 35725 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not also bound by the terms of this order and has executed an Undertaking in the form hereof. At the conclusion of this proceeding (including any proceeding on administrative review, judicial review or remand), I will promptly destroy any documents containing or reflecting Confidential Information, other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking, and that MCM shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Position: \_\_\_\_\_

Affiliation: \_\_\_\_\_